

**Great Lakes Welding and Boiler Company and  
International Brotherhood of Boilermakers,  
Iron Ship Builders, Blacksmiths, Forgers and  
Helpers, Local Lodge No. 744. Case 8-CA-  
25727**

June 15, 1994

**DECISION AND ORDER**

BY MEMBERS STEPHENS, DEVANEY, AND COHEN

Upon a charge filed by the Union on August 17, 1993, the General Counsel of the National Labor Relations Board issued a complaint on December 29, 1993, against Great Lakes Welding and Boiler Company, the Respondent, alleging that it has violated Section 8(a)(1) and (5) of the National Labor Relations Act. Although properly served copies of the charge and complaint, the Respondent failed to file an answer.

On May 12, 1994, the General Counsel filed a Motion for Summary Judgment with the Board. On May 16, 1994, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

**Ruling on Motion for Summary Judgment**

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted. Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Region, by letter dated February 9, 1994, notified the Respondent that unless an answer was filed, a Motion for Summary Judgment would be filed. The Respondent did inform the Region, by telephone, that it was considering whether to accept the Charging Party's settlement proposal, but the Respondent has not agreed to nor abided by the Charging Party's proposed settlement, nor expressed any intention to do so by any certain date.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

**FINDINGS OF FACT**

**I. JURISDICTION**

The Respondent, an Ohio corporation, with an office and place of business in Cleveland, Ohio, has been engaged in the installation, repair, and servicing of industrial boilers. In conducting its business operations, the Respondent annually purchases and receives, at its Cleveland, Ohio facility, goods and materials valued in excess of \$50,000 directly from points outside the State of Ohio. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

**II. ALLEGED UNFAIR LABOR PRACTICES**

The following employees of the Respondent constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All production and maintenance employees, excluding all office clerical employees and professional employees, guards and supervisors as defined in the Act.

Since at least 1992, and at all material times, the Union has been the designated exclusive collective-bargaining representative of the unit, and since at least 1992, the Union has been recognized as the representative by the Respondent. This recognition has been embodied in successive collective-bargaining agreements, the most recent of which was effective from May 1, 1992, to April 30, 1994. At all times since 1992, based on Section 9(a) of the Act, the Union has been the exclusive bargaining representative of the unit.

From about February 17 through August 17, 1993, the Respondent failed to remit all fringe benefit contributions due under the contract, including those contributions due the Boilermakers-Blacksmith National Pension Trust and the Boilermakers National Annuity Trust. These contributions relate to wages, hours, and other terms and conditions of employment of the unit and are mandatory subjects for the purposes of collective bargaining. The Respondent engaged in this conduct without the prior consent of the Union.

**CONCLUSIONS OF LAW**

By the acts and conduct described above, the Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees, has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Sec-

tion 7 of the Act, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5) and Section 2(6) and (7) of the Act.

#### REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has violated Section 8(a)(5) and (1) by failing to make contractually required fringe benefit contributions, including those contributions due the Boilermakers-Blacksmith National Pension Trust and the Boilermakers National Annuity Trust, we shall order the Respondent to make whole its unit employees by making all such delinquent contributions, including any additional amounts due the funds in accordance with *Merryweather Optical Co.*, 240 NLRB 1213, 1216 fn. 7 (1979). In addition, the Respondent shall reimburse unit employees for any expenses ensuing from its failure to make the required contributions, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enf. 661 F.2d 940 (9th Cir. 1981), such amounts to be computed in the manner set forth in *Ogle Protection Service*, 183 NLRB 682 (1970), enf. 444 F.2d 502 (6th Cir. 1971), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

#### ORDER

The National Labor Relations Board orders that the Respondent, Great Lakes Welding and Boiler Company, Cleveland, Ohio, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing to remit all fringe benefit contributions due under the current contract with International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, Local Lodge No. 744, including those contributions due the Boilermakers-Blacksmith National Pension Trust and the Boilermakers National Annuity Trust on behalf of the employees in the following unit:

All production and maintenance employees, excluding all office clerical employees and professional employees, guards and supervisors as defined in the Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Make all fringe benefit contributions due, including making all delinquent contributions, and make the

unit employees whole as set forth in the remedy section of this decision.

(b) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(c) Post at its facility in Cleveland, Ohio, copies of the attached notice marked "Appendix."<sup>1</sup> Copies of the notice, on forms provided by the Regional Director for Region 8, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

Dated, Washington, D.C. June 15, 1994

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James M. Stephens, Member

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Dennis M. Devaney, Member

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Charles I. Cohen, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

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<sup>1</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

#### APPENDIX

NOTICE TO EMPLOYEES  
POSTED BY ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD  
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT fail to remit all fringe benefit contributions due under the current contract with the International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, Local Lodge No. 744, including those contributions due the Boiler-

makers-Blacksmith National Pension Trust and the Boilermakers National Annuity Trust on behalf of our employees in the following unit:

All production and maintenance employees, excluding all office clerical employees and professional employees, guards and supervisors as defined in the Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL make all fringe benefit contributions due, including making all delinquent contributions, and make our unit employees whole, with interest, as set forth in a Decision of the National Labor Relations Board.

GREAT LAKES WELDING AND BOILER  
COMPANY